



Montana Legislative Services Division
Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

TO: Law and Justice Interim Committee
FROM: Helen Thigpen, Staff Attorney
DATE: January 27, 2011
RE: House Bill 198 (2011) Litigation Update

In May 2011, a group of landowners in Pondera and Teton Counties initiated a lawsuit challenging the constitutionality of House Bill 198 (2011). This lawsuit is separate from litigation that occurred in 2010, in which the 9th Judicial District Court (Pondera and Teton Counties) concluded that MATL LLP could not condemn certain property for the construction of the Montana-Alberta Tie-Line (MATL) because Montana law did not expressly provide it with the power of eminent domain.¹

The lawsuit against HB 198, known as *Maurer Farms Inc. v. State*, (Cause No. DV 11-024), was filed by 11 landowners (Plaintiffs) who own property within the corridor for the MATL project, a private merchant transmission line that will run approximately 130 miles from Great Falls, Montana, to Lethbridge, Canada.² HB 198 provides that a public utility as defined in § 69-3-101, MCA, or a person issued a certificate under the Major Facility Siting Act (MFSA), Title 75, chapter 20, MCA, may acquire property through eminent domain. MATL received a MFSA certificate in October 2008.

In *Maurer Farms* the Plaintiffs allege that the MATL project will harm the use and enjoyment of their property, including their farming operations. Thus far, the Plaintiffs have refused to grant easements for the transmission line and are seeking to invalidate HB 198. The Plaintiffs requested a declaration from the Court that HB 198 violates several of the Plaintiffs' constitutional rights. The Plaintiffs raised nine specific claims against HB 198:

1. Denial of Due Process Rights under the U.S. Constitution (U.S. Const. 5th and 14th Amends.)
2. Denial of Due Process Rights under the Montana Constitution (Mont. Const. Art. II, § 17)
3. Violation of prohibition on retroactive legislation (Mont. Const. Art. II, § 31)*
4. Violation of prohibition on special legislation (Mont. Const. Art. V, § 12)
5. Denial of inalienable rights (property rights) (Mont. Const. Art. II, § 3)
6. Denial of the right to participate (Mont. Const. Art. II, § 8)

¹In 2010, MATL LLP sought to condemn private property to facilitate the construction of the MATL project. Judge McKinnon dismissed MATL's complaint, and MATL appealed. The Montana Supreme Court held that HB 198 applied retroactively to the MATL project and provided MATL with condemnation authority. The case, *MATL LLP v. Salois*, 2011 MT 126, 360 Mont. 510, 255 P.3d 158, was remanded to the District Court for further proceedings and was ultimately dismissed.

² Enbridge, an energy company based in Alberta, Canada, assumed ownership of the MATL project in October 2011.

7. Denial of equal protection (Mont. Const. Art. II, § 4)*
8. Denial of equal protection (U.S. Const. 14th Amend.)*
9. HB 198 is void due to passage of Senate Bill 233 and Senate Bill 320*
(* indicates the counts that have been dismissed)

MATL moved to dismiss the Plaintiffs' complaint for failure to state a claim. MATL also filed a counterclaim to condemn the Plaintiffs' property. On October 4, 2011, the District Court dismissed several of the Plaintiffs' claims, but did not dismiss the due process, special legislation, property rights, or right to participate claims. In dismissing several of the claims, the Court concluded that the Plaintiffs failed to establish an equal protection claim because HB 198 did not create a separate class of people or treat that class differently. With respect to the Plaintiffs' retroactive legislation claim, the Court concluded that because the retroactive applicability date in HB 198 was explicit, it did not violate § 1-2-109, MCA. The Plaintiffs' voidness argument was also dismissed. The other claims raised by the Plaintiffs remain active as of the date of this memo.

In October, the Court also issued a separate order addressing MATL's counterclaim for condemnation. In this order, the Court agreed with MATL and concluded that the condemnation claims could be brought as a counterclaim to the Plaintiffs' challenge against HB 198, but that the issue of whether HB 198 is constitutional should be addressed first. However, the Court agreed with the Plaintiffs that specific amounts offered by MATL to purchase the Plaintiffs' property included in the counterclaim should be removed.

In early November, MATL and the State, through the Attorney General's Office,³ filed separate motions for summary judgment to dismiss the case without proceeding to trial. The Plaintiffs also filed a motion for summary judgment. In disputing the Plaintiffs' motion for summary judgment, the State argued that HB 198 is a "valid exercise of legislative power clarifying existing law on delegated power of eminent domain and authorized public uses"⁴

On January 11, 2012, Judge Swandal (Park and Sweet Grass Counties) awarded summary judgment in favor of MATL and concluded that HB 198 did not violate procedural or substantive due process guarantees or the prohibition on special legislation. Judge Swandal stated that the construction of an electrical transmission line has long been expressly included in Montana law as an exercise of a legitimate governmental objective. The issues of "public use" and "necessity" still need to be considered. Those issues will be addressed in the condemnation proceedings in the coming months, which are tentatively scheduled for early April.

CI0429 2027hhea.

³The Attorney General's Office is defending the constitutionality of HB 198.

⁴State of Montana's Memo. in Opposition to Plaintiffs' Motion for Summary Judgment (Nov. 21, 2011).